



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB2869

Introduced 1/20/2006, by Sen. Antonio Munoz

SYNOPSIS AS INTRODUCED:

720 ILCS 570/505

from Ch. 56 1/2, par. 1505

Amends the Illinois Controlled Substances Act concerning forfeited conveyances. Provides that when any forfeited conveyance, including an aircraft, vehicle, or vessel is returned to the seizing agency or prosecutor, the conveyance must be used for a minimum of one year in the enforcement of laws relating to cannabis or controlled substances. Provides that after one year, the conveyance may be used for official use in the enforcement of any law. Provides that upon disposal, all proceeds from the sale of the conveyance must be used for drug enforcement purposes. Effective immediately.

LRB094 17675 RLC 52973 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Controlled Substances Act is
5 amended by changing Section 505 as follows:

6 (720 ILCS 570/505) (from Ch. 56 1/2, par. 1505)

7 Sec. 505. (a) The following are subject to forfeiture:

8 (1) all substances which have been manufactured,
9 distributed, dispensed, or possessed in violation of this
10 Act;

11 (2) all raw materials, products and equipment of any
12 kind which are used, or intended for use in manufacturing,
13 distributing, dispensing, administering or possessing any
14 substance in violation of this Act;

15 (3) all conveyances, including aircraft, vehicles or
16 vessels, which are used, or intended for use, to transport,
17 or in any manner to facilitate the transportation, sale,
18 receipt, possession, or concealment of property described
19 in paragraphs (1) and (2), but:

20 (i) no conveyance used by any person as a common
21 carrier in the transaction of business as a common
22 carrier is subject to forfeiture under this Section
23 unless it appears that the owner or other person in
24 charge of the conveyance is a consenting party or privy
25 to a violation of this Act;

26 (ii) no conveyance is subject to forfeiture under
27 this Section by reason of any act or omission which the
28 owner proves to have been committed or omitted without
29 his knowledge or consent;

30 (iii) a forfeiture of a conveyance encumbered by a
31 bona fide security interest is subject to the interest
32 of the secured party if he neither had knowledge of nor

1 consented to the act or omission;

2 (4) all money, things of value, books, records, and
3 research products and materials including formulas,
4 microfilm, tapes, and data which are used, or intended to
5 be used in violation of this Act;

6 (5) everything of value furnished, or intended to be
7 furnished, in exchange for a substance in violation of this
8 Act, all proceeds traceable to such an exchange, and all
9 moneys, negotiable instruments, and securities used, or
10 intended to be used, to commit or in any manner to
11 facilitate any violation of this Act;

12 (6) all real property, including any right, title, and
13 interest (including, but not limited to, any leasehold
14 interest or the beneficial interest in a land trust) in the
15 whole of any lot or tract of land and any appurtenances or
16 improvements, which is used or intended to be used, in any
17 manner or part, to commit, or in any manner to facilitate
18 the commission of, any violation or act that constitutes a
19 violation of Section 401 or 405 of this Act or that is the
20 proceeds of any violation or act that constitutes a
21 violation of Section 401 or 405 of this Act.

22 (b) Property subject to forfeiture under this Act may be
23 seized by the Director or any peace officer upon process or
24 seizure warrant issued by any court having jurisdiction over
25 the property. Seizure by the Director or any peace officer
26 without process may be made:

27 (1) if the seizure is incident to inspection under an
28 administrative inspection warrant;

29 (2) if the property subject to seizure has been the
30 subject of a prior judgment in favor of the State in a
31 criminal proceeding, or in an injunction or forfeiture
32 proceeding based upon this Act or the Drug Asset Forfeiture
33 Procedure Act;

34 (3) if there is probable cause to believe that the
35 property is directly or indirectly dangerous to health or
36 safety;

1 (4) if there is probable cause to believe that the
2 property is subject to forfeiture under this Act and the
3 property is seized under circumstances in which a
4 warrantless seizure or arrest would be reasonable; or

5 (5) in accordance with the Code of Criminal Procedure
6 of 1963.

7 (c) In the event of seizure pursuant to subsection (b),
8 forfeiture proceedings shall be instituted in accordance with
9 the Drug Asset Forfeiture Procedure Act.

10 (d) Property taken or detained under this Section shall not
11 be subject to replevin, but is deemed to be in the custody of
12 the Director subject only to the order and judgments of the
13 circuit court having jurisdiction over the forfeiture
14 proceedings and the decisions of the State's Attorney under the
15 Drug Asset Forfeiture Procedure Act. When property is seized
16 under this Act, the seizing agency shall promptly conduct an
17 inventory of the seized property and estimate the property's
18 value, and shall forward a copy of the inventory of seized
19 property and the estimate of the property's value to the
20 Director. Upon receiving notice of seizure, the Director may:

21 (1) place the property under seal;

22 (2) remove the property to a place designated by the
23 Director;

24 (3) keep the property in the possession of the seizing
25 agency;

26 (4) remove the property to a storage area for
27 safekeeping or, if the property is a negotiable instrument
28 or money and is not needed for evidentiary purposes,
29 deposit it in an interest bearing account;

30 (5) place the property under constructive seizure by
31 posting notice of pending forfeiture on it, by giving
32 notice of pending forfeiture to its owners and interest
33 holders, or by filing notice of pending forfeiture in any
34 appropriate public record relating to the property; or

35 (6) provide for another agency or custodian, including
36 an owner, secured party, or lienholder, to take custody of

1 the property upon the terms and conditions set by the
2 Director.

3 (e) If the Department of Professional Regulation suspends
4 or revokes a registration, all controlled substances owned or
5 possessed by the registrant at the time of suspension or the
6 effective date of the revocation order may be placed under
7 seal. No disposition may be made of substances under seal until
8 the time for taking an appeal has elapsed or until all appeals
9 have been concluded unless a court, upon application therefor,
10 orders the sale of perishable substances and the deposit of the
11 proceeds of the sale with the court. Upon a revocation rule
12 becoming final, all substances may be forfeited to the
13 Department of Professional Regulation.

14 (f) When property is forfeited under this Act the Director
15 shall sell all such property unless such property is required
16 by law to be destroyed or is harmful to the public, and shall
17 distribute the proceeds of the sale, together with any moneys
18 forfeited or seized, in accordance with subsection (g).
19 However, upon the application of the seizing agency or
20 prosecutor who was responsible for the investigation, arrest or
21 arrests and prosecution which lead to the forfeiture, the
22 Director may return any item of forfeited property to the
23 seizing agency or prosecutor for official use in the
24 enforcement of laws relating to cannabis or controlled
25 substances, if the agency or prosecutor can demonstrate that
26 the item requested would be useful to the agency or prosecutor
27 in their enforcement efforts. When any forfeited conveyance,
28 including an aircraft, vehicle, or vessel is returned to the
29 seizing agency or prosecutor, the conveyance must be used for a
30 minimum of one year in the enforcement of laws relating to
31 cannabis or controlled substances. After one year, the
32 conveyance may be used for official use in the enforcement of
33 any law. Upon disposal, all proceeds from the sale of the
34 conveyance must be used for drug enforcement purposes. When any
35 real property returned to the seizing agency is sold by the
36 agency or its unit of government, the proceeds of the sale

1 shall be delivered to the Director and distributed in
2 accordance with subsection (g).

3 (g) All monies and the sale proceeds of all other property
4 forfeited and seized under this Act shall be distributed as
5 follows:

6 (1) 65% shall be distributed to the metropolitan
7 enforcement group, local, municipal, county, or state law
8 enforcement agency or agencies which conducted or
9 participated in the investigation resulting in the
10 forfeiture. The distribution shall bear a reasonable
11 relationship to the degree of direct participation of the
12 law enforcement agency in the effort resulting in the
13 forfeiture, taking into account the total value of the
14 property forfeited and the total law enforcement effort
15 with respect to the violation of the law upon which the
16 forfeiture is based. Amounts distributed to the agency or
17 agencies shall be used for the enforcement of laws
18 governing cannabis and controlled substances, except that
19 amounts distributed to the Secretary of State shall be
20 deposited into the Secretary of State Evidence Fund to be
21 used as provided in Section 2-115 of the Illinois Vehicle
22 Code.

23 (2) (i) 12.5% shall be distributed to the Office of the
24 State's Attorney of the county in which the prosecution
25 resulting in the forfeiture was instituted, deposited in a
26 special fund in the county treasury and appropriated to the
27 State's Attorney for use in the enforcement of laws
28 governing cannabis and controlled substances. In counties
29 over 3,000,000 population, 25% will be distributed to the
30 Office of the State's Attorney for use in the enforcement
31 of laws governing cannabis and controlled substances. If
32 the prosecution is undertaken solely by the Attorney
33 General, the portion provided hereunder shall be
34 distributed to the Attorney General for use in the
35 enforcement of laws governing cannabis and controlled
36 substances.

1 (ii) 12.5% shall be distributed to the Office of the
2 State's Attorneys Appellate Prosecutor and deposited in
3 the Narcotics Profit Forfeiture Fund of that office to be
4 used for additional expenses incurred in the
5 investigation, prosecution and appeal of cases arising
6 under laws governing cannabis and controlled substances.
7 The Office of the State's Attorneys Appellate Prosecutor
8 shall not receive distribution from cases brought in
9 counties with over 3,000,000 population.

10 (3) 10% shall be retained by the Department of State
11 Police for expenses related to the administration and sale
12 of seized and forfeited property.

13 (h) Species of plants from which controlled substances in
14 Schedules I and II may be derived which have been planted or
15 cultivated in violation of this Act, or of which the owners or
16 cultivators are unknown, or which are wild growths, may be
17 seized and summarily forfeited to the State. The failure, upon
18 demand by the Director or any peace officer, of the person in
19 occupancy or in control of land or premises upon which the
20 species of plants are growing or being stored, to produce
21 registration, or proof that he is the holder thereof,
22 constitutes authority for the seizure and forfeiture of the
23 plants.

24 (Source: P.A. 89-404, eff. 8-20-95; 90-593, eff. 6-19-98.)

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.